(3)

No. 92-2043

IN THE
SUPREME COURT OF THE UNITED STATES

JUDITH CHILDS, Executrix of the Estate
of John Childs, Deceased,
and
RANDY HOOD,

Petitioners

vs.

STATE OF OKLAHOMA, ex rel.
OKLAHOMA STATE UNIVERSITY,

Respondent

Supreme Court, U.S.
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**ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF OKLAHOMA**

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the United States Supreme Court will substitute its interpretation of Oklahoma's Governmental Tort Claims Act for the interpretation by the Oklahoma Supreme Court?
2. Whether a bar to an action in tort against the State of Oklahoma when a potential litigant is covered by worker's compensation unduly interferes with interstate commerce?
3. Whether removal of the ability to sue the State of Oklahoma in tort when a potential litigant is covered by worker's compensation violates due process?
4. Whether creation of two classes of tort litigants -- (1) those affected by torts committed by the State or its political subdivisions and (2) those affected by torts committed by other persons -- violates equal protection?

5. Whether Oklahoma's imposition of its own law in a tort action arising from a traffic accident in Oklahoma involving a State of Oklahoma vehicle and a privately owned Texas vehicle rather than Texas law violates the Full Faith and Credit Clause?

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Restatement (2d) Conflict of Laws
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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

JUDITH CHILDS, executor of
the Estate of John Childs, deceased,
and
RANDY HOOD,

Petitioners,

vs.

STATE OF OKLAHOMA, ex rel.
OKLAHOMA STATE UNIVERSITY,

Respondent.

Summary of Argument

The Petitioners Childs and Hood ("Childs") ask the Court to grant certiorari to the Oklahoma Supreme Court in an attempt to overturn the lower court's ruling allowing the Oklahoma Governmental Tort Claims Act's worker's compensation exemption to bar their tort action against the State of Oklahoma ("State" or "Oklahoma").

Childs predominant argument is that the Oklahoma Supreme Court misconstrued the Oklahoma Legislature's intent in passing the

exemption; however, the State court's interpretation of a matter of solely State law binds the U.S. Supreme Court. The federal court may not substitute its interpretation of Oklahoma law.

Childs' four attempts to convince the Court that certiorari should be granted in the alternative in order to condemn constitutionally Oklahoma's exercise of sovereign power also fail to provide reason for the U.S. Supreme Court to exercise its discretion and take this case.

The worker's compensation exemption does not impermissibly discriminate against interstate commerce. The exemption applies equally to in-state and out-of-state residents. If the exemption affects interstate commerce, it does so only incidentally, while serving the legitimate local concern the State has in avoiding insolvency or burdensome taxes.

Oklahoma's decision to limit who may sue for damages arising from State torts does not deny due process of the law. The ability to sue a sovereign is not a property right; it is, instead, a privilege. Absent a protected interest, Childs cannot support a claim of denial of due process.

The State's classification of tort claimants into two categories -- (1) those injured by government acts and (2) those injured by non-government acts -- does not deny equal protection of the laws. As already noted, the State has a legitimate interest in protecting its treasury to avoid insolvency or burdensome taxation. As a statute neutral both on its face and its application, the Oklahoma Governmental Tort Claims Act classification need only be rationally related to its purpose.

Oklahoma is not required to afford full faith and credit to Texas law when the incident in question occurred wholly within

the State's territory. The negligence of the State driver occurred in Oklahoma and the injuries suffered by the petitioners were incurred in Oklahoma. Having the most significant contacts with the event, Oklahoma is entitled to impose its own law.

Childs does not cite any case or offer any compelling argument which supports the view that Oklahoma somehow has overstepped its sovereign powers by retaining limits on its tort liability. Her request for certiorari should be denied.

Argument

PROPOSITION I: THE U.S. SUPREME COURT IS BOUND TO ACCEPT THE OKLAHOMA SUPREME COURT'S INTERPRETATION OF OKLAHOMA LAW.

Childs asks for certiorari so this Court may substitute its interpretation of a provision of the Oklahoma Governmental Tort Claims Act[1] for the interpretation made by the Oklahoma Supreme Court and applied to

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[1] Okla. Stat. Tit. 51, §§ 151 et seq. (Supp. 1988).

Childs' case. This prayer for substitution will not support certiorari. The U.S. Supreme Court is bound to accept an interpretation of State law by that State's highest court. Hortonville Joint School District No. 1 v. Hortonville Education Association, 426 U.S. 482, 488, 96 S.Ct. 2308, 49 L.Ed.2d 1, 7 (1976).

The Oklahoma Supreme Court is Oklahoma's highest civil court. Okla. Const. art. VII, § 4. That court has interpreted the Oklahoma Governmental Tort Claims Act in a manner that makes the worker's compensation exemption apply to Childs' action. Despite Childs' belief that the State court misunderstood the State legislature's intention in enacting the exemption, the U.S. Supreme Court may not alter the meaning of the statute as expressed by Oklahoma's highest court. Certiorari should not be granted on a perceived misinterpretation of Oklahoma law by the Oklahoma Supreme Court.

PROPOSITION II: OKLAHOMA'S GOVERNMENTAL TORT CLAIMS ACT WORKER'S COMPENSATION EXEMPTION APPLIES EQUALLY TO IN-STATE AND OUT-OF-STATE RESIDENTS, AFFECTING INTERSTATE COMMERCE ONLY INCIDENTALLY.

The test of validity for State statutes regulating interstate commerce is three-fold:

1. Does the challenged law regulate evenhandedly, with only incidental effects on interstate commerce, or does the act discriminate against interstate commerce either on its face or in practical effect?

2. Does the statute serve a legitimate local purpose?

3. If so, could alternative means promote that local purpose without discriminating against interstate commerce?

Hughes v. Oklahoma, 441 U.S. 322, 336, 99 S.Ct. 1727, 1736, 60 L.Ed.2d 250, 262 (1979).

Even when Oklahoma accepts, for purposes of this proposition only, Childs' contention that the worker's compensation exemption

affects interstate commerce, it is clear the statute passes Hughes inspection. The exemption is evenhanded; it denies recovery against the State to all injured persons covered by a worker's compensation act, regardless of whether they engage in interstate or intrastate commerce. A State that places severe limitations on its own citizens does not discriminate against interstate commerce when it imposes identical restrictions on non-residents. See, Sporhase v. Nebraska, ex rel. Douglas, 458 U.S. 941, 955-956, 102 S.Ct. 3456, 3464, 73 L.Ed.2d 1254, 1265 (1982).

As the mighty struggle by Childs to concoct an effect shows, the exemption's impact on interstate commerce is minimal -- certainly less than the effect of any State's highway speed limits or gasoline taxes. The statute complies with the first aspect of the Hughes test.

The various limitations on State tort liability in Oklahoma's Governmental Tort Claims Act protect governmental functions by assuring funds will be available for essential services without intolerable tax burdens or the risk of insolvency. Wilson v. Gipson, 753 P.2d 1349, 1351 (Okla. 1988). Sound financial standing is essential to the health of any State's economy and is, therefore, a legitimate local concern. See, Lewis v. BT Investment Managers, Inc., 447 U.S. 27, 38, 100 S.Ct. 2009, 2016, 64 L.Ed.2d 702, 713 (1980). A State serves a legitimate local purpose when it seeks to conserve its resources so long as it does so in a non-discriminatory manner. See, Hughes, 441 U.S. at 337, 99 S.Ct. at 1737, 60 L.Ed.2d at 262. The exemption complies with the second aspect of the Hughes test.

The third aspect of the Hughes test need not be addressed because it assumes some discrimination against interstate commerce

was found in applying the first two portions. No such discrimination exists here.

The worker's compensation exemption complies with all aspects of Hughes, does not violate the interstate commerce clause and cannot support certiorari as an infringement of that portion of the Constitution.

PROPOSITION III: THE ABILITY TO SUE THE STATE OF OKLAHOMA IN TORT IS A PRIVILEGE RATHER THAN A PROPERTY RIGHT PROTECTED BY THE FIFTH AMENDMENT.

Subject to federal constitutional limitations, States have all the sovereign powers of independent nations. Sturges v. Crowninshield, 17 U.S. (4 Wheat.) 122, 192-193, 4 L.Ed. 529, 548 (1819). As a sovereign, a State may not be sued in its own or another State's courts unless the State has given consent to the suit or has otherwise waived its immunity. Great Northern Life Ins. Co. v. Read, 322 U.S. 47, 51, 64 S.Ct. 873, 88 L.Ed. 1121, 1125 (1944).

By judicial decision, Oklahoma has granted persons afflicted by State acts or omissions the ability to maintain tort actions against the State. Vanderpool v. State, 672 P.2d 1153 (Okla. 1983). But, at the court's invitation, the Oklahoma Legislature has limited that ability. Okla. Stat. Tit. 51, § 152.1 (Supp. 1988). Among the limitations is the provision prohibiting suit against the State by claimants who already are protected by a worker's compensation act. Okla. Stat. Tit. 51, § 155 (14) (Supp. 1988).

A legislature has absolute power to remove the ability to sue; this power is inherent in government as a sovereign. Heller v. United States, 776 F.2d 92, 98 (3rd Cir. 1985), cert. denied 476 U.S. 1105, 106 S.Ct. 1948, 90 L.Ed.2d 358 (1986). Such removal does not violate due process because the ability to sue is a privilege accorded by government, not a property right protected by

the Fifth or Fourteenth Amendments. See, Lynch v. United States, 292 U.S. 571, 581, 54 S.Ct. 840, 78 L.Ed. 1434, 1442 (1934).

Because Oklahoma, as a sovereign, has the power to limit tort actions against itself, the State has not infringed on Childs' due process rights, and Childs' contention on this issue will not support certiorari.

PROPOSITION IV: OKLAHOMA'S CLASSIFICATION OF TORT VICTIMS INTO PERSONS AFFECTED BY GOVERNMENT ACTIONS AND THOSE AFFECTED BY NON-GOVERNMENT ACTIONS REASONABLY PROTECTS THE STATE TREASURY, A LEGITIMATE STATE INTEREST.

Certainly, travel is a basic constitutional right. Memorial Hospital v. Maricopa County, 415 U.S. 250, 94 S.Ct. 1076, 39 L.Ed.2d 306 (1974). But that right does not require, as Childs contends, the State which a person travels into to treat the traveler better than the State's own residents merely because the traveler enjoyed more advantageous treatment where he came

from. Califano v. Gautier Torres, 435 U.S. 1, 4, 98 S.Ct. 906, 55 L.Ed.2d 65, 69 (1978). The Fourteenth Amendment simply requires a State to provide equal protection of its laws to all persons within its jurisdiction. McCoy v. Providence Journal Co., 190 F.2d 760,764 (1st Cir. 1951), cert. denied 342 U.S. 894, 72 S.Ct. 200, 96 L.Ed. 669 (1951).

This concept of equal protection requires uniform treatment of persons standing in the same relationship to the governmental action in question. Reynolds v. Sims, 377 U.S. 533, 565, 84 S.Ct. 1362, 12 L.Ed.2d 506, 529 (1964), rehearing denied 379 U.S. 870, 85 S.Ct. 12, 13 L.Ed.2d 76. Equal protection does not forbid classifications. Nordlinger v. Hahn, ___ U.S.___, 112 S.Ct. 2326, 120 L.Ed.2d 1, 12 (1992).

As long as the classification is not founded on a suspect categorization and does not jeopardize the exercise of a fundamental right, the classification will be upheld if

it rationally furthers a legitimate State interest. Nordlinger, ___ U.S. at ___, 120 L.Ed.2d at 12. The classification of persons injured by government torts as opposed to those injured by non-government torts does not implicate a suspect class. On its face, the classification does not jeopardize any fundamental right, and Childs' argument that the categorization interferes with the right to travel is pure conjecture with no basis in fact. State law implicates the right to travel only when it actually deters such travel, when impeding travel is its primary objective or when it uses any classification which serves to penalize the right. Attorney General of New York v. Soto-Lopez, 476 U.S. 898, 903 106 S.Ct. 2317, 2321, 90 L.Ed.2d 899, 905 (1986). Childs does not demonstrate that Oklahoma's law does any of these things; therefore, the Court will measure the worker's compensation exemption by the rational-basis test.

As stated in Proposition II, concerning interstate commerce, the classification safeguards the public treasury. Wilson, 753 P.2d at 1351. Such State- or municipal-government tort limitations have often been recognized as legitimate and compatible with the Equal Protection Clause. See, e.g., Murphy v. Edmonds, 325 Md. 342, 601 A.2d 102 (1992); State by and through Colorado State Claims Board of the Division of Risk Management v. DeFoor, 824 P.2d 783 (Colo. 1992); M.D. Anderson Hospital and Tumor Institute v. Felter, 837 S.W.2d 245 (Tex. App. 1992); Turrentine v. Brookhaven, Miss. School District, 794 F. Supp. 620 (S.D. Miss. 1992); Imlay v. City of Lake Crystal, 453 N.W.2d 326 (Minn. 1990).

Facially neutral classifications are presumed constitutional. Nordlinger, ___ U.S. at ___, 120 L.Ed.2d at 12. Childs has the burden of showing the unreasonableness of the worker's compensation exemption. Kite v.

Marshall, 661 F.2d 1027, 1030 (5th Cir. 1981), rehearing denied 666 F.2d 591 (1981), cert. denied 457 U.S. 1120, 102 S.Ct. 2934, 73 L.Ed.2d 1333 (1982). Childs cannot meet this burden; therefore, certiorari should be denied.

PROPOSITION V: OKLAHOMA'S LAW APPLIES TO THE INCIDENT THAT GIVES RISE TO THIS ACTION BECAUSE THAT INCIDENT OCCURRED WHOLLY WITHIN OKLAHOMA, GIVING THE STATE THE MOST SIGNIFICANT CONTACT WITH THE EVENT.

In the most convoluted of her arguments, Childs demands the Court restrain Oklahoma from applying its own law to a tort that occurred wholly within its jurisdiction and instead order Oklahoma to subjugate itself to Texas law. Childs' contention that the Full Faith and Credit Clause[2] requires this result ignores the necessity of giving full faith and credit to Oklahoma's law, as well.

The Full Faith and Credit Clause does not require a State to subordinate its laws

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[2] U.S. Const., art. IV, § 1.

on peculiarly domestic matters involving local sovereignty to the statutes of another State. Application of Schatz, 80 Wash.2d 204, 497 P.2d 153 (1972).

Texas and Oklahoma follow the same choice-of-laws rule: The law applied to a specific case is that of the State with the most significant contacts. Brickner v. Gooden, 525 P.2d 632 (Okla. 1974), Gutierrez v. Collins, 583 S.W.2d 312 (Tex. 1979). Here, John Childs and Randy Hood, Texas residents, were killed and injured, respectively, when an Oklahoma State University driver operated his State vehicle negligently in Oklahoma. Petitioners' Brief, pp. 1-2. When the conduct effecting the tort and the injury from that conduct occur in the same State, that State has the dominant interest, and its law is applied. See, Restatement (2d) Conflict of Laws, § 146, Comment d, § 147, Comment d.

Application of simple conflict of laws principles shows the law governing any action arising from the traffic accident is that of Oklahoma, and Childs' argument for dominance of Texas law will not support a full-faith-and-credit challenge. Certiorari, therefore, should be denied.

Conclusion

While many other States' statutes may retain a lesser degree of sovereign immunity from tort liability, Childs has failed to cite a single case either on point or analogous to this one in which either a State court of last resort or a federal appellate court has ruled such immunity unconstitutional. Childs has failed to show that she has any likelihood of success in demonstrating sovereign immunity as retained by Oklahoma is unconstitutional. And Childs is mistaken in the belief that the U.S. Supreme Court may substitute its own

interpretation of State law for the opinion of that State's highest court.

In light of Childs' failure to support the petition for certiorari, the State of Oklahoma asks the Court to deny certiorari.

Respectfully submitted,

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